

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

THOMAS J. MORAN,

Plaintiff,

1:19-cv-00808 (BKS/DJS)

v.

JOAN C. FINN, et al.,

Defendants.

Appearances:

Plaintiff pro se

Thomas J. Moran

Albany County Correctional Facility

840 Albany Shaker Road

Albany, NY 12211

Hon. Brenda K. Sannes, United States District Judge:

DECISION AND ORDER

Plaintiff Thomas J. Moran commenced this proceeding under 42 U.S.C. § 1983 and sought leave to proceed *in forma pauperis* (“IFP”). (Dkt. Nos. 5, 9). This matter was referred to United States Magistrate Judge Daniel J. Stewart who, on September 26, 2019, granted Plaintiff’s application to proceed IFP, and on October 1, 2019, issued a Report-Recommendation, recommending that Plaintiff’s complaint be dismissed with leave to replead. (Dkt. No. 20). Magistrate Judge Stewart determined that the complaint failed to provide a “short and plain statement of the claim showing that the pleader is entitled to relief,” as required by Fed. R. Civ. P. 8. (*Id.* at 3–4). The Report-Recommendation stated that Plaintiff had fourteen days within which to file written objections to the report under 28 U.S.C. § 636(b)(1), and that the failure to object to the report within fourteen days would preclude appellate review. (*Id.* at 6).

The Report-Recommendation was sent to Plaintiff's last known address, but was returned to the Court marked "Returned to Sender, No Longer Incarcerated at Facility." (Dkt. No. 22). The Text Order granting Plaintiff IFP status was also returned to the Court as undeliverable with the same marking. (Dkt. No. 21). On November 19, 2019, the Court issued an Order granting Plaintiff an additional fourteen days to notify the Court of his current address and file any objections to the Report-Recommendation. (Dkt. No. 23). That Order was also returned to the Court marked "Returned to Sender, No Longer Incarcerated at Facility." (Dkt. No. 24). Plaintiff has failed to respond to the November 19, 2019 Order or submit objections to the Report-Recommendation.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

Accordingly, it is

ORDERED that the Report-Recommendation (Dkt. No. 20) is **ADOPTED** in its entirety; and it is further

ORDERED that the Amended Complaint (Dkt. No. 9) is **DISMISSED without prejudice** under Fed. R. Civ. P. 8; and it is further


ORDERED that if Plaintiff wishes to proceed with this action he must file an Amended Complaint, as set forth in the Report-Recommendation, **within thirty (30) days** of the date of this Order; and it is further

ORDERED that if Plaintiff fails to file an Amended Complaint as directed, the Clerk shall enter judgment indicating that this action is **DISMISSED without prejudice**; and it is further

ORDERED that the Clerk of the Court serve a copy of this Decision and Order on Plaintiff.

IT IS SO ORDERED.

Dated: December 23, 2019
Syracuse, New York


Brenda K. Sannes
Brenda K. Sannes
U.S. District Judge